MONTANA LEGISLATIVE HISTORY

Chapter 659 19 83

Bill H _____ S 260 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 11	✓ C	Hearing Date(s)	Jan 29	✓ C
	Mar 22	✓ C			C
		C			C
		C			C
Date Out	Mar 22	✓ C		Jan 29	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 260

INTRODUCED BY HALLIGAN

IN THE SENATE

January 22, 1983	Introduced and referred to Committee on Judiciary.
January 24, 1983	Fiscal Note requested.
January 27, 1983	Committee recommend bill do pass. Report adopted.
January 28, 1983	Fiscal Note returned.
	Bill printed and placed on members' desks.
January 29, 1983	Second reading, do pass.
January 31, 1983	Correctly engrossed.
February 1, 1983	Third reading, passed. Ayes, 48; Noes, 0. Transmitted to House.

IN THE HOUSE

February 2, 1983	Introduced and referred to Committee on Judiciary.
March 22, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in.

IN THE SENATE

March 26, 1983	Returned to Senate with amendments.
March 31, 1983	Second reading, amendments not concurred in. Ayes, 49; Noes, 0.

March 31, 1983	On motion, Conference Committee requested and appointed.
April 6, 1983	Conference Committee reported.
April 7, 1983	Second reading, report adopted.
April 8, 1983	Third reading, report adopted. Ayes, 46; Noes, 0.
April 20, 1983	Conference Committee report adopted by House.
	Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 260

INTRODUCED BY Halligan

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE LAWS RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL TO ROADS AND PARKING AREAS ADAPTED FOR PUBLIC TRAVEL AND USED BY THE PUBLIC WITH THE CONSENT OF THE OWNER; AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-101, MCA, is amended to read:

"61-8-101. Application -- exceptions. (1) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) where a different place is specifically referred to in a given section;

(b) the provisions of 61-8-301 and 61-8-401~~(1)(b), (1)(c), and (2), with regard to operating a vehicle while under the influence of drugs,~~ shall apply upon highways and elsewhere throughout the state~~;~~

(c) the provisions of 61-8-401, except subsections (1)(b), (1)(c), and (2) thereof, and 61-8-402 through 61-8-405 apply upon all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public with the express or implied consent of the owner.

(2) The operation of motor vehicles directly across the public roads and highways of this state, especially as required in the transportation of natural resource products, including agricultural products and livestock, shall not be considered to be the operation of such vehicles on the public roads and highways of this state or on ways of this state open to the public, provided that such crossings are adequately marked with warning signs or devices. Such crossings are subject to provisions relating to stopping before entry and to restoration of any damage as may reasonably be prescribed by the state or local agency in control of safety of operation of the public highway involved."

Section 2. Section 61-8-401, MCA, is amended to read:

"61-8-401. Persons under the influence of alcohol or drugs. (1) It is unlawful and punishable as provided in 61-8-714(1) for any person who is under the influence of:

(a) alcohol to drive or be in actual physical control of a motor vehicle upon ~~the highways~~ ways of this state open

INTRODUCED BILL
SB 260

to the public;

(b) a narcotic drug to drive or be in actual physical control of a motor vehicle within this state; or

(c) any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state.

(2) The fact that any person charged with a violation of subsection (1) is or has been entitled to use such a drug under the laws of this state does not constitute a defense against any charge of violating subsection (1).

(3) In any criminal prosecution for a violation of subsection (1) of this section relating to driving a vehicle while under the influence of alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at that time in excess of 0.05% but less than 0.10% by weight of alcohol in the defendant's blood, that fact shall not give rise to any presumption that the defendant was or was not under the influence of alcohol

but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of alcohol.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood.

(5) Each municipality in this state is given authority to enact 61-8-714 and subsections (1) through (4) of this section with the word "state" in subsection (1) of this section changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of the ordinance and of the imposition of the fines and penalties therein provided."

Section 3. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon ~~the public highways~~ ways of this state open to the public shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the

influence of alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon ways of this state open to the public ~~highways of this state~~ while under the influence of alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon ways of this state open to the public ~~highways of this state~~ while under the influence of alcohol and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of 60 days. Like refusal by a nonresident shall be subject to suspension by the division in like

manner. All such suspensions are subject to review as hereinafter provided."

Section 4. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public ~~highways~~ while under the influence of alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 5. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon ways of this state open to the public ~~highways~~ while under the influence of alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol."

-End-

48th LEGISLATIVE SESSION

COMMITTEE ON SENATE JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
201	1-19-83	1-31-83	2-2-83	2-2-83					
203	1-19-83	1-31-83	2-15-83			2-15-83			
218	1-19-83	1-31-83	2-2-83	2-2-83					
220	1-19-83	2-1-83	2-2-83	2-2-83					
225	1-19-83	2-1-83	2-2-83	2-2-83					
225	2-7-83	2-10-83	2-15-83			2-15-83			
226	1-19-83	1-28-83	1-28-83						
236	1-20-83	1-28-83	2-2-83			2-2-83			
237	1-20-83	2-1-83	2-7-83			2-9-83			
248	1-21-83	1-31-83	2-7-83			2-7-83			
260	1-24-83	1-27-83	1-27-83	1-27-83					
261	2-10-83	2-14-83	TABLED						
262	1-24-83	2-3-83	TABLED						
290	1-26-83	2-3-83	2-7-83			2-7-83			
303	1-27-83	2-7-83	TABLED						
313	1-28-83	2-4-83	2-17-83			2-17-83			

(Use Separate Sheet for Senate, House Bills, and Resolutions)

CONSIDERATION OF SENATE BILL 260: Senator Halligan, sponsor of this bill, advised that there is a need to change the language in the D.U.I. laws to include more geographical areas.

Jim Nugent, City Attorney for the City of Missoula, testified in support of SB260 and distributed a memo to the Committee (Exhibit "C"). He felt the D.U.I. laws should be extended to include additional areas not covered by the bill as drafted.

John Scully, representing the Montana Sheriff and Peace Officers, supported the idea of SB260 but was concerned about Section 1(b) and (c). He felt these sections needed more clarifying.

Colonel Bob Landon of the Montana Highway Patrol, appeared and voiced his support. He testified that his office receives many complaints from the public regarding drunk drivers in places where the highway patrol has no jurisdiction.

There being no further proponents, and no opponents, the hearing on SB260 was closed.

CONSIDERATION OF SENATE BILL 179: Senator Stimatz, sponsor of this bill, advised that it was requested by the Montana University System because of problems they were having with conflicts between the antidiscrimination and nepotism laws. He advised the Committee that HB501 was being introduced in the House which deals essentially with the same problem and requested that consideration of SB179 be deferred until the passage of HB501. The Committee felt that since time had been scheduled for hearing SB179, Senator Stimatz should continue with his testimony as planned.

LeRoy Schramm, Chief Legal Council for the Montana University System, spoke as a proponent to the bill. He felt there is a definite need to clarify antidiscrimination and nepotism statutes. It was his opinion that HB501 would more broadly deal with this issue and he strongly favored its adoption, but felt that SB179 would still remedy the problems the university system is now facing.

Chip Erdmann of the Montana School Board Association supported the concept of SB179, but also strongly favored the adoption of HB501.

There being no further proponents, the hearing was opened to the opponents.

Ann MacIntyre, representing the Human Rights Commission, supported the concept of SB179, but objected to the piece meal approach to

the problem. She felt HB501 would more effectively clarify the statutes. She urged a do not pass recommendation of SB179 from the Committee.

Wes Krawczyk, representing the American Civil Liberties Union, strongly opposed this bill and stated that state government should set examples.

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Senator Crippen questioned Wes Krawczyk as to what proposals the A.C.L.U. would have to handle this catch-22 situation. Wes Krawczyk advised that he had no alternative suggestions but would consult with his staff.

There being no further discussion by the Committee, the hearing was closed.

The Chairman announced the Committee was now ready to take executive action on bills previously heard.

DISPOSITION OF SENATE BILL 178: Senator Berg moved that SB178 DO PASS. This motion carried unanimously.

DISPOSITION OF SENATE BILL 260: The Committee discussed the possibilities of amending the bill to cover additional and specific areas. Chairman Turnage felt the bill is broad enough as it now reads. Senator Halligan moved SB260 DO PASS. This motion passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 177: The Committee expressed a concern with injecting federal laws into the statute. The bill was referred to counsel for review.

FURTHER CONSIDERATION OF HOUSE BILL 53: Counsel explained the amendments as prepared for the Committee. The amendments would eliminate the confusing penalty language as now written in the bill. Senator Mazurek added that the amendment should also include the change of "defendant" to drawer". The Committee agreed with this. Senator Crippen moved to adopt the amendments as now proposed. This motion passed unanimously. Senator Daniels requested a "grey" copy of the bill before voting on its passage. The Committee concented to delay disposition until its receipt of the "grey" copy.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:40.

JEAN A. TURNAGE
Chairman, Judiciary Committee

STANDING COMMITTEE REPORT

January 27 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 260

Halligan

Respectfully report as follows: That Senate Bill No. 260

(Introduced)

DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

STATUS SHEET

HOUSE JUDICIARY COMMITTEE

48TH Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 225	To extend the period of time following request for release in which a person voluntarily committed to a mental health facility may be detained, etc.	2/28/83	Sen. Daniels	3/9/83	Be Not Concurred In	3/11/83
SB 226	Youth Courts, providing for party's moving for continuances, also in custodial situations	2/4/83	Sen. Crippen	3/9/83	Be Concurred In	3/10/83
SB 236	Crime law, forfeiture, addressing to list of items creating rebuttable presumption; disposition of drug fines, etc.	2/9/83	Sen. Crippen	3/9/83	Be Concurred In	3/9/83
SB 237	To provide a procedure for restitution to victims of crimes by the criminal offenders, etc.	3/1/83	Sen. Halligan	3/21/83	Be Concurred In As Amended	3/22/83
SB 248	Revise laws relating to claim of mental disease or defect in criminal prosecution; allowing a county attorney, etc.	3/1/83	Sen. Towe	3/21/83	Be Concurred In	3/21/83
SB 260	To extend laws relating to operation of motor vehicle while under influence of alcohol to roads and parking areas, etc.	2/2/83	Sen. Halligan	3/11/83	Be Concurred In As Amended	3/22/83

Form CS-32
1-79

REPRESENTATIVE HANNAH thought that one of the main ingredients in thse bills is the definition of the language "ways of the state open to the public"; and he wondered if when these bills are passed out of this committee and become law, will this language be incorporated into all of them. MS. POWER responded that any action taken on SB 313 or any other of these bills will be reconciled in a conference committee. She advised that this bill does not address or appear to change the language "upon the public highways", but SB 250 does address that particular issue and requires a change in the language.

REPRESENTATIVE HANNAH commented that he missed the testimony on the federal money and wondered what was said. SENATOR HALLIGAN responded that there is around $300,000.00 available for training and equipment. MR. GOKE clarified by saying that there would be approximately $300,000.00 a year; the fact that the federal government would increase that funding, it obviously would grow; and it contains a four-year provision wherein they would stand to receive at least $900,000.00.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 260

This bill extends the laws relating to the operation of a motor vehicle while under the influence of alcohol to roads and parking areas adapted for public travel and used by the public with the consent of the owner.

SENATOR HALLIGAN, District 48, Missoula, stated that the language on the bottom of page 1 and continuing on the top of page 2 defines "ways of this state open to the public" and is the only language that will make it through the Senate. He commented that there was concern that if you were sitting in your Winnebago, which is parked in your driveway, drinking a beer,

and you could get picked up for drunk driving if the engine was on. He noted that this particular language has been upheld by the Washington Supreme Court and does address many of the major issues. He advised that at the present time, if you are drunk and go into the K-mart parking lot, the law enforcement people cannot do anything to arrest you if you are under the influence of alcohol; if you are on drugs, they can; and on alcohol, they cannot. He emphasized that this will take care of that problem.

BETTY WING, Deputy County Attorney for Missoula County and a member of the task force on drunk driving, said that she had a proposed amendment and she hoped that Senator Halligan is wrong in his statement that that is the only language that will get through the Senate. See Exhibit C. She stated that they have problems in Missoula and everywhere else with people driving on public parks, on the campus, and other public lands that are not ways open to the public; they are not streets and they are not suppose to be driving across lawns, through the grass and through the campus, so they hope this amendment will open it a little more so they can arrest these people for drunk driving. She also advised that when they go to court they have to prove everything that is in this language and the language on the end says "with the express or implied consent of the owner"; she did not think that this adds anything, and it is just one more thing they are going to have to prove. She indicated that they would have to bring in the manager of K-mart to show that they do have express or implied consent and this would just be another hassle for them.

JIM NUGENT, Missoula City Attorney, offered a statement in support of this bill. See EXHIBIT D.

There were no further proponents and no opponents.

SENATOR HALLIGAN said that when he was going to college, he thought driving on the college campus was a way open to the public, and he would give Ms. Wing's amendment a shot - he thought it may be an amendment that may be acceptable to the Senate.

REPRESENTATIVE ADDY asked if there was no other violation that a person could be charged with other than drunk driving if he were driving his vehicle on a public land. MR. NUGENT replied that if he were in a park and the park was in the city limits, there is a law that says they cannot operate a motor vehicle in a park. REPRESENTATIVE SPAETH commented that it could be criminal mischief or reckless driving. MR. NUGENT responded that a drunk driver is not necessarily a reckless driver - some of them drive quite slowly and you can't look at that as an alternative to dui.

REPRESENTATIVE ADDY said that it would seem to him that if they were driving quite slowly in a place that was not a road that had people in it that that would be considered reckless.

REPRESENTATIVE DAILY asked if Missoula does any thing as far as the campus is concerned to try and stop these kind of things. MR. NUGENT responded they have an outreach program where they try to get the students involved in trying to help other students with alcohol problems. He indicated that they patrol the streets, but when he is talking about the campus, he is not talking about the roads in the campus, but he is talking about the lawns themselves. He said that he has been prosecuting for eight years now and he could tell a lot of horror stories; and until 1979, they were able to prosecute those people anywhere and a lot of them involved serious accidents.

REPRESENTATIVE DAILY asked, since this is such an obvious problem did he present testimony in support of raising the drinking age from 19 to 21-years-of-age. MR. NUGENT replied that he did not come over on that bill but he personally supports that.

REPRESENTATIVE JENSEN asked if he would support raising the drinking age to higher than 21 - would he go for 35 or 40 years of age. MR. NUGENT replied that a lot of people in the Missoula area say that they would like to get it above the college age level. He stated that statistically it shows that it does reduce the number of deaths of young people if you raise it.

CHAIRMAN BROWN said that he has problems understanding the language "with the express or implied consent of the owner" as this could get in the way in connection with parking lots, the lot in front of the bar, or the lot at the shopping center and he wondered if he thought that any of this would be a major problem with this language left as it is. MS. WING replied that it is hard to look at the future, but it appears to be one more conflict that can come up in a trial and she felt that clearly, in any parking lot or driveway, does have the express or implied consent of the owner but it gets technical in legal terms to prove what implied consent is.

REPRESENTATIVE EUDAILY asked with the amendments where it is being opened to all public lands of the state, what about state school lands that are way out in the boon docks, state forestry lands, land way removed from the general population, would these people still be picked up out there. MS. WING replied that it would cover all state lands.

There were no further questions and the hearing on this bill was closed.

SENATE BILL 386

SENATOR HALLIGAN, District 48, Missoula, stated that this bill provides that a direct communication to a judge by a litigant or his attorney that is intended to influence the outcome of any matter pending before the judge constitutes a contempt of court. He felt this was a formal way of saying that you really should not interfere with the judicial process because there is a tremendous need to preserve the dignity of the court when matters are pending before the court. He indicated that there is a wide gap in the statute that allows someone to come up to a judge that is involved in a proceeding before the court and discuss the matter with them and attempt to interfere or influence the judge's decision. He suggested that the bill be amended on page 3, line 14, by changing the word "interested" to the word, "involved".

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SENATE BILL 260 DATE March 11, 1983

SPONSOR SENATOR HALLIGAN

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
D.B. Tooley	Helena	Driver Services	✓	
A. Dahl	Helena	Mont. Beer Wholesalers	✓	
Jim Nugent	Missoula	City of Missoula	✓	
Leon Stalpp	Missoula	City of Missoula	✓	
Betty Wing	Missoula	Task force on drunk driving	✓	
Sarah Power	Helena	Atty General	—	
Cathy Campbell	Helena	Mont. Assn. of Churches	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

MISSOULA COUNTY
OFFICE OF THE ATTORNEY
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802
TELEPHONE: (406) 721-5700

BERT L. DESCHAMPS III
OUNTY ATTORNEY

Exhibit C
SB 260
3-11-83

Betty Wing
Deputy County Attorney

Proponent of Senate Bill 260

Proposed amendments:

Amend Section 61-8-101(c) to read "apply upon all public lands of the state or its subdivisions and all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public. ~~with the express or implied consent of the owner.~~

Exhibit D
SB260
3-11-83

TO: HOUSE JUDICIARY COMMITTEE MEMBERS

FROM: JIM NUGENT, MISSOULA CITY ATTORNEY

RE: SENATE BILL 260 - EXTENDING THE GEOGRAPHICAL AREA FOR THE APPLICABILITY OF LAWS ON DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL

DATE: MARCH 10, 1983 Memo 83-46

Dear House Judiciary Committee Members:

I would like to urge your support for legislation that will extend the geographical applicability of laws prohibiting the oepration or physical control of motor vehicles while under the influence of alcohol to include geographical areas of this state in addition to "highways of this state" (Section 61-8-401(1)(a), M.C.A.).

I have prosecuted driving under the influence (D.U.I.) cases for the City of Missoula for nearly eight (8) years. I am aware of many fact situations within the City of Missoula limits where the City police have either apprehended or been called to a location where a D.U.I. offender is off the highway and is in such places as a park, boulevard, school campus yard, parking lot, a yard, at a service station's fuel pumps, railroad property, or other property owned by a public entity. Some of these incidents involved accidents and some did not. When I commenced prosecuting D.U.I. cases for the City of Missoula in June, 1975, the Revised Codes of Montana allowed the prosecution of all D.U.I. offenders who were anywhere in the state, including those on the types of property identified above. However, in 1979, during recodification of State laws to the Montana Code Annotated, it is my understanding that a very lengthy legislative bill, labeled as a style change bill altered codified D.U.I. statutory language to the effect that it eliminated a prosecutor's ability to prosecute driving under the influence of alcohol offenders anywhere in the state and limited the prosecutorial power to the "highways of this state". Ironically, however, a prosecutor may still prosecute anyone who operates or is in physical control of a motor vehicle while he/she is under the influence of a narcotic drug or any other drug anywhere they are found "within this state".

I have never personally made a survey of other state laws in order to compile a definite total as to how many states allow prosecution of D.U.I. offenders no matter where they are located within the respective state. I do have personal knowledge from writing legal briefs and reading many supreme court cases from other states over the years that many states do allow the prosecution of D.U.I. offenders no matter where in the state they are discovered. They use such statutory language as "anywhere in the state" or "upon the highways and elsewhere throughout the state". A person who is operating or in physical control of a motor vehicle while under the influence of either alcohol or drugs is a serious threat or danger to persons and property whether the D.U.I. offender is on a highway or located elsewhere in the state. State legislative bodies have a very legitimate and real responsibility and duty to be concerned about regulating drivers who are under the influence of alcohol in geographical areas other than strictly upon the "highways of this state". Further, individuals exposed to the dangers of the individual under the influence of alcohol who operates or is in physical control of a motor vehicle while under the influence of alcohol have a right to be protected from those D.U.I. offenders no matter where they are operating in this state.

D

The text of 29 A.L.R.3d 938, in discussing the issue of prosecuting D.U.I. offenders anywhere within a state, set forth the following passages from court cases discussing this issue which are appropriate for your consideration:

> ". . . it would be absurd, said the Court, to say that one could not be convicted of driving while intoxicated under this statute merely because at the time of the violation the driver happenedto be on a private roadway instead of on a public street or highway, because no one can say when such a person in his confused and befuddled state of mind will leave the private road and pursue a mad, zig zagging course down a public highway or street, with the resulting damage and horrors so frequently reported." 29 A.L.R.3d 938, 942. Also, see State v. Carroll, 225 Minn. 384, 31 NW 2d 44 (1948). (emphasis supplied)

In Cook v. State, 220 Ga. 463, 464, 139 SE2d 383, the Court pointed out that:

> "the court pointed out that the widespread use of motor vehicles, and the use of extensive private property for shopping centers and other purposes with intricate mazes of roadways and driveways, indicated the need for protection of the public from drivers under the influence of intoxicants on places other than public streets and highways. The court further noted that there was ordinarily no immunity from prosecution for crime because the act was committed on private property, even the private property of the accused, and that a person had the freedom to use his property as he pleased only so long as he did not thereby endanger the rights of others." 29 A.L.R. 3d 949-950.

The Court in People v. Guynn, 338 NE2d 293, 33 Ill.App.3d 736, 3 National Traffic Law News 71 at 72 (1975), stated the following while upholding the constitutionality of an Illinois statute allowing prosecution of D.U.I. offenders anywhere in the state:

> ". . . . Similarly, in Farley v. State (1965), 251 Miss. 497, 170 So 2d 625, the court gave consideration to the language which made it illegal for an intoxicated person to 'drive any vehicle within the State.' The court in that case stated that the statute 'is not a road regulation but a prohibition against an intoxicated person operating an automobile.' The court found that this was logical because of the potential danger when an intoxicated person operates a motor vehicle. It was stated in the Farley case that a person in an intoxicated condition might not remain off the highway and actually might injure others in other places." See also: State v. Carroll (1948), 225 Minn. 384, 31 NW2d 44. (emphasis supplied)

Therefore, I would strongly urge your enactment of legislation during this legislative session that would extend the ability to prosecute D.U.I. offenders under the influence of alcohol to all geographical areas in addition to the highways of this state. Senate Bill 260 is a step in the right direction, but it does not adequately address the problem. It is erroneous to assume that the operator of a motor vehicle who is under the influence

of alcohol will only operate their motor vehicle upon a way maintained for public travel. Therefore, I request that you enact legislation that does fully and adequately address the problem of the drinking driver by amending Senate Bill 260 to allow prosecution of drivers under the influence of alcohol anywhere in this state. Please see the attached proposed amendment which would do this.

Thank you.

Respectfully,

Jim Nugent
City Attorney

JN/jd

cc: Police Chief Sabe Pfau
Judge Wallace N. Clark

Proposed Amendments to Senate Bill 260

1. Page 1, lines 6 through 9, amended to read as follows:

"influence of alcohol to ANYWHERE WITHIN THIS STATE ~~roads and parking areas adapted for public travel and used by the public with the consent of the owner~~. Amending Sections 61-8-101 and 61-8-401 through 61-8-404, M.C.A."

2. Page 1, lines 23-25 amended to read:

"(c) the provisions of 61-8-401, SHALL BE APPLICABLE ANYWHERE WITHIN THIS STATE. ~~, except subsections (1)(b), (1)(e), and (2) thereof, and 61-8-492 through 61-8-495 apply upon all ways of this state open to the~~"

3. Page 2, lines 1 through 6, delete the following:

~~public. For the purposes of this section and 61-8-401 through 61-8-404, 'ways of this state open to the public' means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public with the express or implied consent of the owner.~~

4. Page 2, line 25, amend to read:

"of a motor vehicle ANYWHERE WITHIN THIS STATE ~~upon the highways ways of this state open~~

5. Page 3, line 1, delete:

~~to the public~~"

6. Page 4, lines 19 and 20, amend to read:

"Any person who operates a motor vehicle ANYWHERE WITHIN THIS STATE ~~upon the public highways ways of this state open to the public~~ shall be

7. Page 5, lines 4 and 5, amend to read:

"physical control of a motor vehicle ANYWHERE WITHIN THIS STATE ~~upon ways of this state open to the public highways of this State while under the~~"

8. Page 5, lines 19 and 20, amend to read:

"vehicle ANYWHERE WITHIN THIS STATE ~~upon ways of this state open to the public highways of this state while under the influence of alcohol and that~~"

9. Page 6, line 19, amend to read:

"ANYWHERE WITHIN THIS STATE ~~upon-ways-of-this-state-open-to the-public-highways-while~~"

10. Page 7, line 14, amend to read:

"ANYWHERE WITHIN THIS STATE ~~upon-ways-of-this state-open-to~~ ~~the-public-highways-while~~"

under this statute to grant transactional immunity. He continued that it also makes it clear that it is the sole discretion of the prosecutor in this amendment. REPRESENTATIVE JENSEN seconded the amendment.

REPRESENTATIVE HANNAH questioned if this meant that they can do either one. REPRESENTATIVE ADDY replied yes.

REPRESENTATIVE RAMIREZ said that he thought this would work and the main thing is where the judge compels the prosecutor to grant immunity. He wondered if this was made clear enough. REPRESENTATIVE ADDY explained that the judge can't compel transactional immunity and he should only be able to compel use immunity and that is why you leave it up to the prosecutor.

There was no further discussion on the amendment and the motion carried unanimously.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE KEYSER seconded the motion. The vote was 14 ayes and 5 nos with REPRESENTATIVE FARRIS, REPRESENTATIVE VELEBER, REPRESENTATIVE DAVE BROWN, REPRESENTATIVE JENSEN, and REPRESENTATIVE EUDAILY voting no.

SENATE BILL 260

CHAIRMAN BROWN indicated that the committee had comparison sheets on the DUI bills. See EXHIBIT E and EXHIBIT F.

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE KEYSER moved to amend the bill on page 2, line 5, following "public" by striking the rest of that language and the language on line 6, which states "with the express or implied consent of the owner". He contended that this would raise so many problems in a court or with an officer that it would absolutely be unworkable.

REPRESENTATIVE JENSEN said this would take out the legal argument that they did not have express or implied consent.

CHAIRMAN BROWN wondered if the language, "in common use by the public" would imply that the bar parking lot, etc. would not be affected by this. REPRESENTATIVE KEYSER explained that it says, "fitted for public travel that is in common use by the public" and this would handle the parking lot and that.

REPRESENTATIVE CURTISS said that she has a note that says that language has been upheld by the Washington state court. REPRESENTATIVE KEYSER asked "with the express or implied consent of the owner". He indicated that Betty Wing or one of them raised that question that that language would lead to a lot of problems. He commented that Washington does a lot of funny things.

REPRESENTATIVE FARRIS indicated that the testimony was that the language had been upheld in the court but this is just one more thing that you have to prove and that you have to argue about.

REPRESENTATIVE SPAETH asked if this was the same language that they worked on in HB 808. CHAIRMAN BROWN said that this is the same definition as is in HB 808, but that HB 808 is dead.

REPRESENTATIVE KEYSER noted that this would also have to be striken in the title.

There was no further discussion and the motion carried with REPRESENTATIVE DAVE BROWN, REPRESENTATIVE RAMIREZ, REPRESENTATIVE SPAETH and REPRESENTATIVE IVERSON voting no.

REPRESENTATIVE DAVE BROWN moved that the bill be amended on page 3, line 3, by striking "within this state" and insert "upon ways of the state open to the public" and the same on lines 6 and 7. REPRESENTATIVE JENSEN seconded the motion. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE BERGENE seconded the motion. The motion carried with REPRESENTATIVE SEIFERT and REPRESENTATIVE DAVE BROWN voting no. The vote was 17 ayes and 2 nos.

STANDING COMMITTEE REPORT

March 22 19 83

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 260

Third reading copy (blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXTEND THE LAWS RELATING TO THE OPERATION OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL TO ROADS AND PARKING AREAS ADAPTED FOR PUBLIC TRAVEL AND USED BY THE PUBLIC WITH THE CONSENT OF THE OWNER; AMENDING SECTIONS 61-8-101 AND 61-8-401 THROUGH 61-8-404, MCA."

Respectfully report as follows: That SENATE Bill No. 260

BE AMENDED AS FOLLOWS:

1. Title, line 7.
Following: "PUBLIC"
Strike: "WITH" through "OWNER" on line 8.

2. Page 1, line 21.
Following: "upon"
Strike: "highways" through "state" on line 22
Insert: "all ways of this state open to the public"

3. Page 2, line 5.
Following: "public"
Strike: "with" through "owner"
on line 6.

4.

xxxxxxxx
DO PASS

DAVE BROWN, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

March 22, 83
19

4. Page 3, line 3.
Following: "vehicle"
Strike: "within this state"
Insert: "upon ways of this state open to the public"

5. Page 3, line 6.
Following: "vehicle"
Strike: "within this state"
Insert: "upon ways of this state open to the public"

AND AS AMENDED
~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXX~~

BE CONCURRED IN

DAVE BROWN,
Chairman.

STATE PUB. CO.
Helena, Mont.